

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DOEDEN FARMS INC.
Lyon County, Iowa**

**ADMINISTRATIVE CONSENT ORDER
NO. 2010-AFO- 34**

TO: Tom Doeden
Doeden Farms Inc.
217 12th Street
Sibley, Iowa 51249

Daniel E. Dekoter, Registered Agent
Doeden Farms Inc.
315 9th Street, P.O. Box 253
Sibley, Iowa 51249-0253

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Doeden Farms Inc. (Doeden Farms) for the purpose of resolving environmental violations relating to a manure application performed by Doeden Farms. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Don Cunningham, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand, Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Doeden Farms is a certified commercial manure service and was hired by New Fashion Pork to land apply manure from New Fashion Pork's 119-Kruger facility. 119-Kruger is located in the NE ¼ of the SE ¼ of section 24, Midland Township in Lyon County, Iowa. 119-Kruger is a 4,000 head swine finisher confinement that has below ground formed manure storage.
2. On December 1, 2009, at approximately 11:40 pm, a representative from Doeden Farms contacted DNR Emergency Response to report a manure spill of approximately 6,000-7,000 gallons of liquid hog manure.
3. On December 2, 2009, Don Cunningham, DNR Field Office 3 environmental specialist, went to the 119-Kruger facility to check the status of the spill and the cleanup efforts. Mr. Cunningham spoke to Mike Van Westen with Doeden Farms to determine the cause of the spill and the status of the manure application at the time of the spill. Mr. Van Westen stated that Warren Van Westen, also with Doeden Farms, was driving north on Kingbird Avenue, approximately 1/3 mile north of the intersection of Kingbird Avenue and 130th Street in Elgin Township, Lyon County, and moved the tractor and manure tank to the side of the road because of a passing car. The manure tank rolled over into the ditch and released approximately 6,000-7,000 gallons of liquid hog manure. Mr. Van Westen stated that New Fashion Pork owned the 119-Kruger facility, but that he was unsure of who managed the site on a daily basis. Mr. Cunningham also spoke to Warren Van Westen who indicated he was driving the tractor at the time of the spill and indicated that the manure was being applied to a field in the NW ¼ of section 24, Midland Township, Lyon County.
4. On December 3, 2009, Mr. Cunningham reviewed the manure management plan (MMP) for the 119-Kruger facility. He determined that the field where the manure was being applied at the time of the spill was not in the current MMP for the facility.
5. On December 7, 2009, Mr. Cunningham spoke to Mike Van Westen about the application field. Mr. Van Westen confirmed that the manure was applied to a field in the NW ¼ of section 24, Midland Township, Lyon County.
6. On December 8, 2009, Mr. Cunningham spoke to Jay Moore, 119-Kruger site manager about the facility's MMP and the application field. Mr. Moore stated he was unaware of the spill. Mr. Cunningham explained the spill and asked Mr. Moore about the application field since it was not in the current MMP. Mr. Moore stated that that the field had soil sampling but that the Phosphorus Index had

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not been calculated. On December 9, 2009, Mr. Cunningham spoke to Mr. Moore again. Mr. Moore stated that New Fashion Pork employees manage the 119-Kruger site on a day to day basis.

7. On December 22, 2009, Mr. Cunningham spoke to Mr. Moore to determine how Doeden Farms had received authorization to apply manure to the application field that was not in the MMP. Mr. Moore stated he spoke to a Doeden Farms representative about the field and that he had told the representatives that soil sampling and a Phosphorus Index would need to be in place prior to manure application. Mr. Moore stated that Doeden Farms had instructions on where to apply manure as well as a copy of the MMP. Mr. Moore had provided Doeden Farms with a copy of the MMP and instructed Doeden Farms to refer to page 3 of the MMP for the fields approved for application.

8. On December 29, 2009, Mr. Cunningham spoke to Tom Doeden, co-owner of Doeden Farms, to determine how Doeden Farms had received authorization to apply manure to the application field that was not in the MMP. Mr. Doeden stated that he had spoken to Mr. Moore regarding the facility needing another application field. Mr. Doeden stated that Mr. Moore told him that he needed soil samples. Mr. Doeden provided the soil samples to Mr. Moore and then assumed that the Phosphorus Index had been taken care of.

9. On December 31, 2009, DNR issued Notice of Violation and Notice of Referral letters to Doeden Farms. The letters included the violation of applying manure to a field that was not in the facility's MMP and to a field that did not have a Phosphorus Index. Doeden Farms was informed the matter would be referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.17(8) states that the MMP shall identify each farm where manure will be applied, the number of acres that will be applied, the number of acres that will be available for the application of the manure from the confinement feeding operation, and the basis under which the land is available. This provision also requires that a copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current MMP. Doeden Farms applied manure from the New Fashion Pork facility to a field that was not in the 119-Kruger MMP. There also was not a copy of any written agreement to apply manure to this field present with the current MMP. The above facts indicate violations of this provision.

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3. 567 IAC 65.17(17) states that manure application rates shall be determined in conjunction with the use of the Iowa Phosphorous Index. The Iowa Phosphorous Index shall be used on each individual field in the MMP. The application field that Doeden Farms applied manure from the New Fashion Pork facility to did not have an Iowa Phosphorus Index. The above facts indicate a violation of this provision.

4. 567 IAC 65.19(8) requires certified commercial manure services to maintain a record of manure disposal operations. The records include a copy of instructions for manure application provided by the owner of the animal feeding operation. This provision also requires the certified commercial manure service to comply with the provisions of the facility's MMP. Doeden Farms did not have a copy of the instructions and land applied manure to a field that was not included in the MMP for 119-Kruger. The above facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Doeden Farms agree to do the following:

1. Doeden Farms shall cease all manure application to fields that do not have proper documentation of sampling and analysis. The fields must be included in the MMPs for facilities from which manure is removed;
2. Doeden Farms shall maintain all records of instruction received for application of manure for a period of three years as required by 567 IAC 65.19(8)"a";
3. Doeden Farms shall comply with all provisions of the MMPs for the facilities for which the company is land applying for; and
4. Doeden Farms shall pay an administrative penalty of \$9,000.00, within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an

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administrative penalty of \$9,000.00. The administrative penalty is determined as follows:

Economic Benefit – An economic benefit was realized through the application of manure from the New Fashion Pork facility to a field that was not included in the MMP and did not have the Phosphorus Index. This saved Doeden Farms time and money in having the proper analysis conducted on the field and they did not have to delay the application to properly add the field to its MMP. It is estimated that Doeden Farms gained an economic benefit of \$1,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to comply with the MMP requirements threatens the animal feeding operation program because compliance with the MMP requirements is required of all applicators. Failure to include all fields in the MMP and failure to conduct the Phosphorus Index analysis can lead to elevated levels of nitrates, ammonia, phosphorus, organic matter, fecal bacteria, e-coli, and other microorganisms in both ground water and surface water. Therefore, \$2,000.00 is assessed for the violation cited in Section IV Paragraph 2; \$1,500.00 is assessed for the violation cited in Section IV Paragraph 3; and \$1,500.00 is assessed for the violation cited in Section IV Paragraph 4 for a total of \$5,000.00 assessed for this factor.

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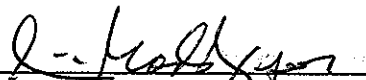
Culpability – Doeden Farms have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Therefore, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Doeden Farms. For that reason Doeden Farms waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 23 day of
June, 2010.



DOEDEN FARMS INC.

Dated this 14 day of
June, 2010.

DNR ID#9986CMSR; Kelli Book, Field Office 3, EPA, VIII.C